
SENATE BILL 5539

State of Washington

60th Legislature

2007 Regular Session

By Senators Fairley, Pridemore and Roach; by request of Department of Personnel

Read first time 01/23/2007. Referred to Committee on Government Operations & Elections.

1 AN ACT Relating to the authority of the director of the Washington
2 state department of personnel and the Washington personnel resources
3 board; amending RCW 41.06.070, 41.06.093, 41.06.420, 41.48.140,
4 41.04.670, 43.43.832, 70.24.300, 72.01.210, and 72.02.045; reenacting
5 and amending RCW 41.06.150; and repealing RCW 41.06.136.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 **Sec. 1.** RCW 41.06.070 and 2002 c 354 s 209 are each amended to
8 read as follows:

9 (1) The provisions of this chapter do not apply to:

10 (a) The members of the legislature or to any employee of, or
11 position in, the legislative branch of the state government including
12 members, officers, and employees of the legislative council, joint
13 legislative audit and review committee, statute law committee, and any
14 interim committee of the legislature;

15 (b) The justices of the supreme court, judges of the court of
16 appeals, judges of the superior courts or of the inferior courts, or to
17 any employee of, or position in the judicial branch of state
18 government;

1 (c) Officers, academic personnel, and employees of technical
2 colleges;

3 (d) The officers of the Washington state patrol;

4 (e) Elective officers of the state;

5 (f) The chief executive officer of each agency;

6 (g) In the departments of employment security and social and health
7 services, the director and the director's confidential secretary; in
8 all other departments, the executive head of which is an individual
9 appointed by the governor, the director, his or her confidential
10 secretary, and his or her statutory assistant directors;

11 (h) In the case of a multimember board, commission, or committee,
12 whether the members thereof are elected, appointed by the governor or
13 other authority, serve ex officio, or are otherwise chosen:

14 (i) All members of such boards, commissions, or committees;

15 (ii) If the members of the board, commission, or committee serve on
16 a part-time basis and there is a statutory executive officer: The
17 secretary of the board, commission, or committee; the chief executive
18 officer of the board, commission, or committee; and the confidential
19 secretary of the chief executive officer of the board, commission, or
20 committee;

21 (iii) If the members of the board, commission, or committee serve
22 on a full-time basis: The chief executive officer or administrative
23 officer as designated by the board, commission, or committee; and a
24 confidential secretary to the chair of the board, commission, or
25 committee;

26 (iv) If all members of the board, commission, or committee serve ex
27 officio: The chief executive officer; and the confidential secretary
28 of such chief executive officer;

29 (i) The confidential secretaries and administrative assistants in
30 the immediate offices of the elective officers of the state;

31 (j) Assistant attorneys general;

32 (k) Commissioned and enlisted personnel in the military service of
33 the state;

34 (l) Inmate, student, part-time, or temporary employees, and part-
35 time professional consultants, as defined by the (~~Washington personnel~~
36 ~~resources board~~) director;

37 (m) The public printer or to any employees of or positions in the
38 state printing plant;

1 (n) Officers and employees of the Washington state fruit
2 commission;

3 (o) Officers and employees of the Washington ((state)) apple
4 ((advertising)) commission;

5 (p) Officers and employees of the Washington state dairy products
6 commission;

7 (q) Officers and employees of the Washington tree fruit research
8 commission;

9 (r) Officers and employees of the Washington state beef commission;

10 (s) Officers and employees of any commission formed under chapter
11 15.66 RCW;

12 (t) Officers and employees of agricultural commissions formed under
13 chapter 15.65 RCW;

14 (u) Officers and employees of the nonprofit corporation formed
15 under chapter 67.40 RCW;

16 (v) Executive assistants for personnel administration and labor
17 relations in all state agencies employing such executive assistants
18 including but not limited to all departments, offices, commissions,
19 committees, boards, or other bodies subject to the provisions of this
20 chapter and this subsection shall prevail over any provision of law
21 inconsistent herewith unless specific exception is made in such law;

22 (w) In each agency with fifty or more employees: Deputy agency
23 heads, assistant directors or division directors, and not more than
24 three principal policy assistants who report directly to the agency
25 head or deputy agency heads;

26 (x) All employees of the marine employees' commission;

27 (y) Staff employed by the department of community, trade, and
28 economic development to administer energy policy functions and manage
29 energy site evaluation council activities under RCW 43.21F.045(2)(m);

30 (z) Staff employed by Washington State University to administer
31 energy education, applied research, and technology transfer programs
32 under RCW 43.21F.045 as provided in RCW 28B.30.900(5).

33 (2) The following classifications, positions, and employees of
34 institutions of higher education and related boards are hereby exempted
35 from coverage of this chapter:

36 (a) Members of the governing board of each institution of higher
37 education and related boards, all presidents, vice-presidents, and
38 their confidential secretaries, administrative, and personal

1 assistants; deans, directors, and chairs; academic personnel; and
2 executive heads of major administrative or academic divisions employed
3 by institutions of higher education; principal assistants to executive
4 heads of major administrative or academic divisions; other managerial
5 or professional employees in an institution or related board having
6 substantial responsibility for directing or controlling program
7 operations and accountable for allocation of resources and program
8 results, or for the formulation of institutional policy, or for
9 carrying out personnel administration or labor relations functions,
10 legislative relations, public information, development, senior computer
11 systems and network programming, or internal audits and investigations;
12 and any employee of a community college district whose place of work is
13 one which is physically located outside the state of Washington and who
14 is employed pursuant to RCW 28B.50.092 and assigned to an educational
15 program operating outside of the state of Washington;

16 (b) The governing board of each institution, and related boards,
17 may also exempt from this chapter classifications involving research
18 activities, counseling of students, extension or continuing education
19 activities, graphic arts or publications activities requiring
20 prescribed academic preparation or special training as determined by
21 the board: PROVIDED, That no nonacademic employee engaged in office,
22 clerical, maintenance, or food and trade services may be exempted by
23 the board under this provision;

24 (c) Printing craft employees in the department of printing at the
25 University of Washington.

26 (3) In addition to the exemptions specifically provided by this
27 chapter, the director of personnel may provide for further exemptions
28 pursuant to the following procedures. The governor or other
29 appropriate elected official may submit requests for exemption to the
30 director of personnel stating the reasons for requesting such
31 exemptions. The director of personnel shall hold a public hearing,
32 after proper notice, on requests submitted pursuant to this subsection.
33 If the director determines that the position for which exemption is
34 requested is one involving substantial responsibility for the
35 formulation of basic agency or executive policy or one involving
36 directing and controlling program operations of an agency or a major
37 administrative division thereof, the director of personnel shall grant
38 the request and such determination shall be final as to any decision

1 made before July 1, 1993. The total number of additional exemptions
2 permitted under this subsection shall not exceed one percent of the
3 number of employees in the classified service not including employees
4 of institutions of higher education and related boards for those
5 agencies not directly under the authority of any elected public
6 official other than the governor, and shall not exceed a total of
7 twenty-five for all agencies under the authority of elected public
8 officials other than the governor.

9 The salary and fringe benefits of all positions presently or
10 hereafter exempted except for the chief executive officer of each
11 agency, full-time members of boards and commissions, administrative
12 assistants and confidential secretaries in the immediate office of an
13 elected state official, and the personnel listed in subsections (1)(j)
14 through (u) and (x) and (2) of this section, shall be determined by the
15 director of personnel. Changes to the classification plan affecting
16 exempt salaries must meet the same provisions for classified salary
17 increases resulting from adjustments to the classification plan as
18 outlined in RCW 41.06.152.

19 Any person holding a classified position subject to the provisions
20 of this chapter shall, when and if such position is subsequently
21 exempted from the application of this chapter, be afforded the
22 following rights: If such person previously held permanent status in
23 another classified position, such person shall have a right of
24 reversion to the highest class of position previously held, or to a
25 position of similar nature and salary.

26 Any classified employee having civil service status in a classified
27 position who accepts an appointment in an exempt position shall have
28 the right of reversion to the highest class of position previously
29 held, or to a position of similar nature and salary.

30 A person occupying an exempt position who is terminated from the
31 position for gross misconduct or malfeasance does not have the right of
32 reversion to a classified position as provided for in this section.

33 **Sec. 2.** RCW 41.06.093 and 1993 c 281 s 24 are each amended to read
34 as follows:

35 In addition to the exemptions set forth in RCW 41.06.070, the
36 provisions of this chapter shall not apply in the Washington state
37 patrol to confidential secretaries of agency bureau chiefs, or their

1 functional equivalent, and a confidential secretary for the chief of
2 staff: PROVIDED, That each confidential secretary must meet the
3 minimum qualifications for the class of secretary II as determined by
4 the (~~Washington personnel resources board~~) director of the Washington
5 state department of personnel.

6 **Sec. 3.** RCW 41.06.150 and 2002 c 371 s 906, 2002 c 354 s 203, 2002
7 c 354 s 202, and 2002 c 110 s 1 are each reenacted and amended to read
8 as follows:

9 The director shall adopt rules, consistent with the purposes and
10 provisions of this chapter and with the best standards of personnel
11 administration, regarding the basis and procedures to be followed for:

- 12 (1) Certification of names for vacancies;
- 13 (2) Examinations for all positions in the competitive and
14 noncompetitive service;
- 15 (3) Appointments;
- 16 (4) Adoption and revision of a comprehensive classification plan(~~(~~
17 ~~in accordance with rules adopted by the board under RCW 41.06.136,~~)
18 for all positions in the classified service, based on investigation and
19 analysis of the duties and responsibilities of each such position and
20 allocation and reallocation of positions within the classification
21 plan.

22 (a) The director shall not adopt job classification revisions or
23 class studies unless implementation of the proposed revision or study
24 will result in net cost savings, increased efficiencies, or improved
25 management of personnel or services, and the proposed revision or study
26 has been approved by the director of financial management in accordance
27 with chapter 43.88 RCW.

28 (b) Reclassifications, class studies, and salary adjustments are
29 governed by (a) of this subsection and RCW 41.06.152;

30 (5) Permitting agency heads to delegate the authority to appoint,
31 reduce, dismiss, suspend, or demote employees within their agencies if
32 such agency heads do not have specific statutory authority to so
33 delegate: PROVIDED, That the director may not authorize such
34 delegation to any position lower than the head of a major subdivision
35 of the agency;

36 (6) Assuring persons who are or have been employed in classified

1 positions before July 1, 1993, will be eligible for employment,
2 reemployment, transfer, and promotion in respect to classified
3 positions covered by this chapter;

4 (7) Affirmative action in appointment, promotion, transfer,
5 recruitment, training, and career development; development and
6 implementation of affirmative action goals and timetables; and
7 monitoring of progress against those goals and timetables.

8 The director shall consult with the human rights commission in the
9 development of rules pertaining to affirmative action. The department
10 of personnel shall transmit a report annually to the human rights
11 commission which states the progress each state agency has made in
12 meeting affirmative action goals and timetables.

13 Rules adopted under this section by the director shall provide for
14 local administration and management by the institutions of higher
15 education and related boards, subject to periodic audit and review by
16 the director.

17 **Sec. 4.** RCW 41.06.420 and 1980 c 118 s 6 are each amended to read
18 as follows:

19 (1) The (~~board~~) director, by rule, shall prescribe the conditions
20 under which an employee appointed to a supervisory or management
21 position after June 12, 1980, shall be required to successfully
22 complete an entry-level management training course as approved by the
23 director. Such training shall not be required of any employee who has
24 completed a management training course prior to the employee's
25 appointment which is, in the judgment of the director, at least
26 equivalent to the entry-level course required by this section.

27 (2) The (~~board~~) director, by rule, shall establish procedures for
28 the suspension of the entry-level training requirement in cases where
29 the ability of an agency to perform its responsibilities is adversely
30 affected, or for the waiver of this requirement in cases where a person
31 has demonstrated experience as a substitute for training.

32 (3) Agencies subject to the provisions of this chapter, in
33 accordance with rules prescribed by the board, shall designate
34 individual positions, or groups of positions, as being "supervisory" or
35 "management" positions. Such designations shall be subject to review
36 by the director as part of the director's evaluation of training and
37 career development programs prescribed by RCW 41.06.400(2).

1 **Sec. 5.** RCW 41.48.140 and 1993 c 281 s 39 are each amended to read
2 as follows:

3 Nothing in RCW 41.48.120 or 41.48.130 shall affect the power of the
4 (~~Washington personnel resources board~~) director of the Washington
5 state department of personnel or any other state personnel authority to
6 establish sick leave rules except as may be required under RCW
7 41.48.120 or 41.48.130: PROVIDED, That each personnel board and
8 personnel authority shall establish the maximum number of working days
9 an employee under its jurisdiction may be absent on account of sickness
10 or accident disability without a medical certificate.

11 "Personnel authority" as used in this section, means a state
12 agency, board, committee, or similar body having general authority to
13 establish personnel rules.

14 **Sec. 6.** RCW 41.04.670 and 1993 c 281 s 18 are each amended to read
15 as follows:

16 The (~~Washington personnel resources board~~) director of the
17 Washington state department of personnel and other personnel
18 authorities shall each adopt rules applicable to employees under their
19 respective jurisdictions: (1) Establishing appropriate parameters for
20 the program which are consistent with the provisions of RCW 41.04.650
21 through 41.04.665; (2) providing for equivalent treatment of employees
22 between their respective jurisdictions and allowing transfers of leave
23 in accordance with RCW 41.04.665(5); (3) establishing procedures to
24 ensure that the program does not significantly increase the cost of
25 providing leave; and (4) providing for the administration of the
26 program and providing for maintenance and collection of sufficient
27 information on the program to allow a thorough legislative review.

28 **Sec. 7.** RCW 43.43.832 and 2006 c 263 s 826 are each amended to
29 read as follows:

30 (1) The legislature finds that businesses and organizations
31 providing services to children, developmentally disabled persons, and
32 vulnerable adults need adequate information to determine which
33 employees or licensees to hire or engage. The legislature further
34 finds that many developmentally disabled individuals and vulnerable
35 adults desire to hire their own employees directly and also need
36 adequate information to determine which employees or licensees to hire

1 or engage. Therefore, the Washington state patrol identification and
2 criminal history section shall disclose, upon the request of a business
3 or organization as defined in RCW 43.43.830, a developmentally disabled
4 person, or a vulnerable adult as defined in RCW 43.43.830 or his or her
5 guardian, an applicant's record for convictions as defined in chapter
6 10.97 RCW.

7 (2) The legislature also finds that the Washington professional
8 educator standards board may request of the Washington state patrol
9 criminal identification system information regarding a certificate
10 applicant's record for convictions under subsection (1) of this
11 section.

12 (3) The legislature also finds that law enforcement agencies, the
13 office of the attorney general, prosecuting authorities, and the
14 department of social and health services may request this same
15 information to aid in the investigation and prosecution of child,
16 developmentally disabled person, and vulnerable adult abuse cases and
17 to protect children and adults from further incidents of abuse.

18 (4) The legislature further finds that the secretary of the
19 department of social and health services must establish rules and set
20 standards to require specific action when considering the information
21 listed in subsection (1) of this section, and when considering
22 additional information including but not limited to civil adjudication
23 proceedings as defined in RCW 43.43.830 and any out-of-state
24 equivalent, in the following circumstances:

25 (a) When considering persons for state employment in positions
26 directly responsible for the supervision, care, or treatment of
27 children, vulnerable adults, or individuals with mental illness or
28 developmental disabilities;

29 (b) When considering persons for state positions involving
30 unsupervised access to vulnerable adults to conduct comprehensive
31 assessments, financial eligibility determinations, licensing and
32 certification activities, investigations, surveys, or case management;
33 or for state positions otherwise required by federal law to meet
34 employment standards;

35 (c) When licensing agencies or facilities with individuals in
36 positions directly responsible for the care, supervision, or treatment
37 of children, developmentally disabled persons, or vulnerable adults,

1 including but not limited to agencies or facilities licensed under
2 chapter 74.15 or 18.51 RCW;

3 (d) When contracting with individuals or businesses or
4 organizations for the care, supervision, case management, or treatment
5 of children, developmentally disabled persons, or vulnerable adults,
6 including but not limited to services contracted for under chapter
7 18.20, (~~(18.487)~~) 70.127, 70.128, 72.36, or 74.39A RCW or Title 71A
8 RCW;

9 (e) When individual providers are paid by the state or providers
10 are paid by home care agencies to provide in-home services involving
11 unsupervised access to persons with physical, mental, or developmental
12 disabilities or mental illness, or to vulnerable adults as defined in
13 chapter 74.34 RCW, including but not limited to services provided under
14 chapter 74.39 or 74.39A RCW.

15 (5) Whenever a state conviction record check is required by state
16 law, persons may be employed or engaged as volunteers or independent
17 contractors on a conditional basis pending completion of the state
18 background investigation. Whenever a national criminal record check
19 through the federal bureau of investigation is required by state law,
20 a person may be employed or engaged as a volunteer or independent
21 contractor on a conditional basis pending completion of the national
22 check. The (~~Washington personnel resources board~~) director of the
23 Washington state department of personnel shall adopt rules to
24 accomplish the purposes of this subsection as it applies to state
25 employees.

26 (6)(a) For purposes of facilitating timely access to criminal
27 background information and to reasonably minimize the number of
28 requests made under this section, recognizing that certain health care
29 providers change employment frequently, health care facilities may,
30 upon request from another health care facility, share copies of
31 completed criminal background inquiry information.

32 (b) Completed criminal background inquiry information may be shared
33 by a willing health care facility only if the following conditions are
34 satisfied: The licensed health care facility sharing the criminal
35 background inquiry information is reasonably known to be the person's
36 most recent employer, no more than twelve months has elapsed from the
37 date the person was last employed at a licensed health care facility to

1 the date of their current employment application, and the criminal
2 background information is no more than two years old.

3 (c) If criminal background inquiry information is shared, the
4 health care facility employing the subject of the inquiry must require
5 the applicant to sign a disclosure statement indicating that there has
6 been no conviction or finding as described in RCW 43.43.842 since the
7 completion date of the most recent criminal background inquiry.

8 (d) Any health care facility that knows or has reason to believe
9 that an applicant has or may have a disqualifying conviction or finding
10 as described in RCW 43.43.842, subsequent to the completion date of
11 their most recent criminal background inquiry, shall be prohibited from
12 relying on the applicant's previous employer's criminal background
13 inquiry information. A new criminal background inquiry shall be
14 requested pursuant to RCW 43.43.830 through 43.43.842.

15 (e) Health care facilities that share criminal background inquiry
16 information shall be immune from any claim of defamation, invasion of
17 privacy, negligence, or any other claim in connection with any
18 dissemination of this information in accordance with this subsection.

19 (f) Health care facilities shall transmit and receive the criminal
20 background inquiry information in a manner that reasonably protects the
21 subject's rights to privacy and confidentiality.

22 (g) For the purposes of this subsection, "health care facility"
23 means a nursing home licensed under chapter 18.51 RCW, a boarding home
24 licensed under chapter 18.20 RCW, or an adult family home licensed
25 under chapter 70.128 RCW.

26 (7) If a federal bureau of investigation check is required in
27 addition to the state background check by the department of social and
28 health services, an applicant who is not disqualified based on the
29 results of the state background check shall be eligible for a one
30 hundred twenty day provisional approval to hire, pending the outcome of
31 the federal bureau of investigation check. The department may extend
32 the provisional approval until receipt of the federal bureau of
33 investigation check. If the federal bureau of investigation check
34 disqualifies an applicant, the department shall notify the requestor
35 that the provisional approval to hire is withdrawn and the applicant
36 may be terminated.

1 **Sec. 8.** RCW 70.24.300 and 1993 c 281 s 60 are each amended to read
2 as follows:

3 The (~~Washington personnel resources board~~) director of the
4 Washington state department of personnel and each unit of local
5 government shall determine whether any employees under their
6 jurisdiction have a substantial likelihood of exposure in the course of
7 their employment to the human immunodeficiency virus. If so, the
8 agency or unit of government shall adopt rules requiring appropriate
9 training and education for the employees on the prevention,
10 transmission, and treatment of AIDS. The rules shall specifically
11 provide for such training and education for law enforcement,
12 correctional, and health care workers. The (~~Washington personnel~~
13 ~~resources board~~) director and each unit of local government shall work
14 with the office on AIDS under RCW 70.24.250 to develop the educational
15 and training material necessary for employees.

16 **Sec. 9.** RCW 72.01.210 and 1993 c 281 s 62 are each amended to read
17 as follows:

18 The secretary of corrections shall appoint chaplains for the state
19 correctional institutions for convicted felons; and the secretary of
20 social and health services shall appoint chaplains for the correctional
21 institutions for juveniles found delinquent by the juvenile courts; and
22 the secretary of corrections and the secretary of social and health
23 services shall appoint one or more chaplains for other custodial,
24 correctional and mental institutions under their control. The
25 chaplains so appointed shall have the qualifications and shall be
26 compensated in an amount, as shall hereafter be recommended by the
27 department and approved by the (~~Washington personnel resources board~~)
28 director of the Washington state department of personnel.

29 **Sec. 10.** RCW 72.02.045 and 2005 c 382 s 1 are each amended to read
30 as follows:

31 The superintendent of each institution has the powers, duties, and
32 responsibilities specified in this section.

33 (1) Subject to the rules of the department, the superintendent is
34 responsible for the supervision and management of the institution, the
35 grounds and buildings, the subordinate officers and employees, and the
36 prisoners committed, admitted, or transferred to the institution.

1 (2) Subject to the rules of the department and the director of the
2 division of prisons or his or her designee and the (~~Washington~~
3 ~~personnel resources board~~) director of the Washington state department
4 of personnel, the superintendent shall appoint all subordinate officers
5 and employees.

6 (3) The superintendent, subject to approval by the secretary, has
7 the authority to determine the types and amounts of property that
8 convicted persons may possess in department facilities. This authority
9 includes the authority to determine the types and amounts that the
10 department will transport at the department's expense whenever a
11 convicted person is transferred between department institutions or to
12 other jurisdictions. Convicted persons are responsible for the costs
13 of transporting their excess property. If a convicted person fails to
14 pay the costs of transporting any excess property within ninety days
15 from the date of transfer, such property shall be presumed abandoned
16 and may be disposed of in the manner allowed by RCW 63.42.040 (1)
17 through (3). The superintendent shall be the custodian of all funds
18 and valuable personal property of convicted persons as may be in their
19 possession upon admission to the institution, or which may be sent or
20 brought in to such persons, or earned by them while in custody, or
21 which shall be forwarded to the superintendent on behalf of convicted
22 persons. All such funds shall be deposited in the personal account of
23 the convicted person and the superintendent shall have authority to
24 disburse moneys from such person's personal account for the personal
25 and incidental needs of the convicted person as may be deemed
26 reasonably necessary. When convicted persons are released from the
27 custody of the department either on parole, community placement,
28 community custody, community supervision, or discharge, all funds and
29 valuable personal property in the possession of the superintendent
30 belonging to such convicted persons shall be delivered to them. In no
31 case shall the state of Washington, or any state officer, including
32 state elected officials, employees, or volunteers, be liable for the
33 loss of such personal property, except upon a showing that the loss was
34 occasioned by the intentional act, gross negligence, or negligence of
35 the officer, official, employee, or volunteer, and that the actions or
36 omissions occurred while the person was performing, or in good faith
37 purporting to perform, his or her official duties. Recovery of damages
38 for loss of personal property while in the custody of the

1 superintendent under this subsection shall be limited to the lesser of
2 the market value of the item lost at the time of the loss, or the
3 original purchase price of the item or, in the case of hand-made goods,
4 the materials used in fabricating the item.

5 (4) The superintendent, subject to the approval of the director of
6 the division of prisons and the secretary, shall make, amend, and
7 repeal rules for the administration, supervision, discipline, and
8 security of the institution.

9 (5) When in the superintendent's opinion an emergency exists, the
10 superintendent may promulgate temporary rules for the governance of the
11 institution, which shall remain in effect until terminated by the
12 director of the division of prisons or the secretary.

13 (6) The superintendent shall perform such other duties as may be
14 prescribed.

15 NEW SECTION. **Sec. 11.** RCW 41.06.136 (Board review of rules
16 affecting classified service--Rules to be developed--Goals) and 2002 c
17 354 s 205 are each repealed.

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